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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,857	03/26/2004	Thomas Gottmoller	030939	7118

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EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,857

Applicant(s)

GOTTEMOLLER, THOMAS

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 102-143, 156-189 and 193-200 is/are pending in the application.
- 4a) Of the above claim(s) 129, 160, 176, 184 and 195 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 102-128, 130-143, 156-159, 161-175, 177-183, 185-189, 193, 194 and 196-200 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group 1 and the soya fiber and beverage...species (i.e. claims 102-128, 130-143, 156-159, 161-175, 177-183, 185-189, 193, 194, and 196-200) in the reply filed on 1/19/06 is acknowledged.

Claim Rejections - 35 USC § 112

2. Claims 126, 128, 130-143, 157, 159, 161-174, 183, 185-189, 194, and 196-200 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 126, 128, 157, 159, 183, and 194 are indefinite in that it is not clear as to what is encompassed by the terminology "simulated milk product" and "simulated meat product."

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 102-124, 126-128, 130-142, 156-159, 161-173, 175, 178-183, 186-189, 193, 194, and 197-200 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1127495.

EP 1127495 discloses a ground soy product having a particle size of, for example, 1-10 microns and a median particle size of between 10-20 microns (see Figure 2), wherein said ground soy product is used in various food compositions such as meat, beverages, and ice cream and wherein said product would be expected to have open portions such that water or a water based liquid is allowed into intracellular spaces of said soy product since same has been ground to such a fine level. It is expected that said product would have the stability as called for in the instant claims due to the similarity in processing with the instant invention and the dry nature of the product.

5. Claims 102-128, 130-143, 156, 157, 159, and 161-174 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 565260.

EP 565260 discloses a ground soybean product having a particle size between 0.1 and 20 microns wherein said product is used in a variety of food products including milks and icings (e.g. claims, page 3, lines 10-42, Example 5). Said product would be expected to have open portions such that water or a water based liquid is allowed into intracellular spaces of said soy product since same has been ground to such a fine level. It is further expected that said product would have the stability as called for in the instant claims due to the similarity in processing with the instant invention and the dry nature of the product.

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6. Claims 102-128, 130-143, 156-159, 161-175, 177-189, 193, 194, and 196-200 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallis et al (U.S. Patent No. 6244528).

Wallis et al discloses ground soybean products having a particle size between 5 and 25 microns wherein same are employed in a variety of food product such as soymilk, tofu, and dairy analogs. Said product would be expected to have open portions such that water or a water based liquid is allowed into intracellular spaces of said soy product since same has been ground to such a fine level. It is further expected that said product would have the stability as called for in the instant claims due to the similarity in processing with the instant invention and the dry nature of the product (col. 1, line 34 – col. 2, line 57; col. 3, line 28 to col. 4, line 34).

7. Claims 102-128, 130-143, 156-159, and 161-174 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of Mustakas et al (U.S. Patent No. 3639129), GB 1400470, Sudo et al (U.S. Patent No. 4902526), and JP 60-141247.

Mustakas et al discloses ground soybean products having a particle size between 5 and 40 microns wherein same are employed in, for example, soy milk (col. 1, line 43 to col. 2, line 75; examples).

GB 1400470 discloses ground soy products having a particle size between 2 and 10 microns wherein same are used in beverages (e.g. soymilk; claims; page 1, lines 49-60, examples).

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Sudo et al discloses ground soybean products having a particle size below 50 microns wherein same is used in beverages (e.g. soymilk; col. 2, line 40 – col. 3, line 60).

JP 60-141247 discloses ground soybean products having a particle size below 10 microns wherein same are used in food products such as soymilk or tofu (see Abstract).

Said products of each of the references above would be expected to have open portions such that water or a water based liquid is allowed into intracellular spaces of said soy product since same has been ground to such a fine level. It is further expected that said products would have the stability as called for in the instant claims due to the similarity in processing with the instant invention and the nature of the dried version of the product .

8. Claims 175, 178-183, 186-189, 193, 194, and 196-200 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 01/64055.

WO 01/64055 discloses ground wheat particles with a particle size between 18-25 microns and their use in a variety of food products (e.g. page 10, line 15-32; page 12, line 15-20). Said product would be expected to have open portions such that water or a water based liquid is allowed into intracellular spaces of said soy product since same has been ground to such a fine level. It is further expected that said product would have the stability as called for in the instant claims due to the similarity in processing with the instant invention and the dry nature of the product

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9. Claims 175, 178-183, 186-189, 193, 194, and 196-200 are rejected under 35 U.S.C. 102(e) as being anticipated by Tsukuda et al.

Tsukuda et al discloses ground wheat fiber products having a particle size between 1 and 30 microns and their use in a variety of edible products including beverages (e.g. Fig. 1; cols. 4 and 6). Said product would be expected to have open portions such that water or a water based liquid is allowed into intracellular spaces of said soy product since same has been ground to such a fine level. It is further expected that said product would have the stability as called for in the instant claims due to the similarity in processing with the instant invention and the dry nature of the product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
March 29, 2006

Anthony Weier
Primary Examiner
Art Unit 1761



3/29/06